

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIASTEVE P. PACHECO,
Plaintiff,

v.

LAWRENCE GAMBOA, et al.,
Defendants.Case No. [15-cv-00987-JCS](#) (PR)**ORDER RE: INSTRUCTIONS TO
PLAINTIFF;****ORDER VACATING BRIEFING
SCHEDULE**

This is a federal civil rights action filed by a pro se state prisoner. One defendant, Mark Allsyer, remains unserved, the summons having been returned as unexecuted. Salinas Valley State Prison states that no person by that name is employed there. (Docket No. 27.)

Plaintiff must assist in serving Allsyer. In cases wherein the plaintiff proceeds *in forma pauperis*, the “officers of the court shall issue and serve all process.” 28 U.S.C. § 1915(d). The Court must appoint the Marshal to effect service, *see* Fed. R. Civ. P. 4(c)(2), and the Marshal, upon order of the Court, must serve the summons and the complaint, *see Walker v. Sumner*, 14 F.3d 1415, 1422 (9th Cir. 1994). Although a plaintiff who is incarcerated and proceeding *in forma pauperis* may rely on service by the Marshal, such plaintiff “may not remain silent and do nothing to effectuate such service”; rather, “[a]t a minimum, a plaintiff should request service upon the appropriate defendant and attempt to

remedy any apparent defects of which [he] has knowledge.” *Rochon v. Dawson*, 828 F.2d 1107, 1110 (5th Cir. 1987).

Here, plaintiff’s complaint has been pending for over 120 days, and, consequently, absent a showing of “good cause,” is subject to dismissal without prejudice as to the unserved defendant, Mark Allsyer. *See* Fed. R. Civ. P. 4(m). Because plaintiff has not provided sufficient information to allow the Marshal to locate and serve the above-referenced defendant, plaintiff must remedy the situation or face dismissal of his claims against him. *See Walker*, 14 F.3d at 1421-22 (holding prisoner failed to show cause why prison official should not be dismissed under Rule 4(m) where prisoner failed to show he had provided Marshal with sufficient information to effectuate service).

Accordingly, plaintiff must either himself serve the unserved defendant with the summons and complaint, or provide the Court with an accurate current location such that the Marshal is able to serve such defendant. If plaintiff fails to effectuate service, or provide the Court with an accurate current location for Allsyer, on or before December 15, 2015, plaintiff’s claims against Allsyer will be dismissed without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

The current briefing schedule (Docket No. 18), which set a dispositive motion deadline of December 19, 2015, is VACATED. Once Allsyer has been served or the claims against him have been dismissed, the Court will set a new briefing schedule.

IT IS SO ORDERED.

Dated: October 29, 2015


JOSEPH C. SPERO
Chief Magistrate Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STEVE P. PACHECO,
Plaintiff,

v.

LAWRENCE GAMBOA, et al.,
Defendants.

Case No. [15-cv-00987-JCS](#)

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 29, 2015, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Steve P. Pacheco ID: AG 8695
Salinas Valley State Prison
P.O. Box 1050
Soledad, CA 93960

Dated: October 29, 2015

Susan Y. Soong
Clerk, United States District Court

By: Karen L. Hom
Karen Hom, Deputy Clerk to the
Honorable JOSEPH C. SPERO

United States District Court
Northern District of California